

C.A. No. 11-50107

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DANIEL EDWARD CHOVAN,

Defendant-Appellant.

R E C E I V E D
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

SEP 26 2011

FILED _____
DOCKETED _____
DATE _____ INITIAL _____


NOTICE OF FILING DOCUMENTS UNDER SEAL

Pursuant to Fed. R. App. P. 27 and 9th Cir. R. 27-13(a), Appellee, United States of America, respectfully moves the Court to file Volume II of Appellee United States' Supplemental Excerpts of Record, under seal. Volume II contains exhibit 3 of the United States' Sentencing Memorandum in the underlying criminal case, which was ordered sealed by the district court on March 21, 2011. There is no separate sealing order, however, a transcript containing the district court's order is attached.

Dated: September 21, 2011

Respectfully submitted,

LAURA E. DUFFY
United States Attorney


CAROLINE P. HAN
Assistant U.S. Attorney

Attorneys for Plaintiff-Appellee
United States of America

1 UNITED STATES OF AMERICA
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF CALIFORNIA

4 HONORABLE JOHN A. HOUSTON
5 UNITED STATES DISTRICT JUDGE PRESIDING

6 UNITED STATES OF AMERICA,)
7 PLAINTIFF,)
8 VS.) NO. 10CR1805JAH
9 DANIEL EDWARD CHOVAN,)
10 DEFENDANT.)
11 _____)

12 **SENTENCING**

13 REPORTER'S TRANSCRIPT OF PROCEEDINGS
14 **MARCH 21, 2011**
15 SAN DIEGO, CALIFORNIA

16
17 MELISSA A. PIERSON, CSR 12499, RPR
18 FEDERAL OFFICIAL COURT REPORTER
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25

1 SAN DIEGO, CALIFORNIA; MONDAY, MARCH 21, 2011

2 - - -

3 (COURT IN SESSION AT 9:00 A.M.)

4 MADAM CLERK: 10CR1805, UNITED STATES OF AMERICA
5 VERSUS DANIEL EDWARD CHOVAN.

6 MR. JONES: GOOD MORNING, YOUR HONOR. JOSHUA
7 JONES, FEDERAL DEFENDERS, ON BEHALF OF MR. CHOVAN. THANK YOU
8 FOR THE COURT ACCOMMODATING ME IN MY FLIGHT DELAY.

9 THE COURT: THAT'S FINE.

10 MS. HAN: GOOD MORNING, YOUR HONOR. CAROLINE HAN
11 ON BEHALF OF THE UNITED STATES.

12 THE COURT: GOOD MORNING. MR. CHOVAN, HOW ARE YOU?

13 THE DEFENDANT: FINE, THANK YOU.

14 THE COURT: WE ARE HERE IN THIS MATTER FOR
15 SENTENCING. I HAVE REVIEWED THE PRE-SENTENCE REPORT, YOUR
16 SENTENCING MEMORANDUM, YOUR REQUEST FOR BAIL PENDING APPEAL,
17 THE GOVERNMENT'S OPPOSITION TO BAIL PENDING APPEAL, THE
18 GOVERNMENT'S SENTENCING MEMORANDUM AND THE GOVERNMENT'S
19 SENTENCING CHART.

20 BEFORE WE BEGIN, TO THE GOVERNMENT, IS THERE ANY
21 REASON WHY EXHIBIT 3 TO YOUR MEMORANDUM SHOULD NOT BE UNDER
22 SEAL?

23 MS. HAN: NO, YOUR HONOR, I DO NOT BELIEVE SO.
24 THERE IS NO REASON FOR THAT.

25 THE COURT: ALL RIGHT. THE COURT ORDERS THAT

1 EXHIBIT NO. 3 TO THE GOVERNMENT'S SENTENCING MEMORANDUM
2 SHOULD BE FILED UNDER SEAL.

3 MR. JONES: THANKS, YOUR HONOR.

4 THE COURT: COUNSEL, I WOULD LIKE TO HEAR FROM YOU.

5 MR. JONES: YES, YOUR HONOR. I THINK IT'S FAIR TO
6 SAY --

7 THE COURT: EXCUSE ME. WE START --

8 MR. JONES: THIS IS SOMEWHAT OF AN UNUSUAL CASE.
9 IF YOU JUST LOOK AT THE BEAR FACTS OF THE CASE, YOU WOULD SAY
10 THAT THIS IS NOT A VERY AGGRAVATED MISDEMEANOR IN POSSESSION
11 OFFENSE. MR. CHOVAN'S MISDEMEANOR, AS THE COURT IS WELL
12 AWARE, IS 15 YEARS OLD AT THIS POINT. THE THINGS THAT THE
13 GOVERNMENT POINTS TO TO MAKE IT MORE AGGRAVATED ARE SPECIFIC
14 CIRCUMSTANCES WITH REGARD TO MR. CHOVAN. THE FACT THAT THE
15 AUTHORITIES WERE ALERTED TO HIS PRESENCE BY A CALL FROM HIS
16 WIFE, WHICH OBVIOUSLY RELATES BACK, EVEN THOUGH THE PREVIOUS
17 CONVICTION IS DATED, WE CAN UNDERSTAND WHY THAT MIGHT GIVE
18 THE GOVERNMENT SOME CONCERN.

19 HOWEVER, I THINK THAT MR. CHOVAN, IN THIS INSTANCE,
20 THERE IS NO INDICATION WHATSOEVER THAT HE HAS EVER USED A
21 FIREARM IN AN INAPPROPRIATE MANNER, OR EVEN THAT HE HAS USED
22 ONE OUTSIDE THE PREMISES OF HIS OWN RESIDENCE.

23 THE FIREARMS THAT MR. CHOVAN HAD HE RECEIVED FROM
24 HIS FATHER -- OR HIS STEPFATHER, WHO'S PRESENT HERE TODAY,
25 ALONG WITH MR. CHOVAN'S MOTHER, HIS GIRLFRIEND, AND HIS